COMMONWEALTH OF PENNSYLVANIA

DEPARTMENT OF AGRICULTURE

DAIRY AND FOOD BUREAU

BULLETIN No. 292

PRELIMINARY REPORT

OF THE

DAIRY AND FOOD COMMISSIONER

FOR THE YEAR 1916

CHAS. E. PATTON, *Secretary of Agriculture*

JAMES FOUST, *Dairy and Food Commissioner*

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VIRTUE
LIBERTY AND INDEPENDENCE

LETTER OF TRANSMITTAL

Hon. Charles E. Patton, Secretary of Agriculture.

Dear Sir: I have the honor to submit herewith a preliminary report of the Dairy and Food Bureau of the Department of Agriculture, for the year ending December 31, 1916. It covers the operations for the year and contains some details that may be useful for public information.

I have the honor to remain,

Very respectfully,

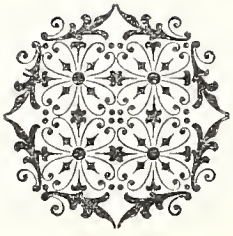
JAMES FOUST,
Dairy and Food Commissioner.

PREFACE

In view of the fact that the full Report of the Department of Agriculture for the year 1916, containing the reports of the several Bureaus of the Department will not be ready for distribution for some weeks, the Dairy and Food Commissioner has, in recent preceding years, furnished the Head of the Department with the following preliminary report; in order that this information may be promptly made available to the public, its issue, as a bulletin of the Department, is authorized.

The more detailed report of the operations of the Dairy and Food Bureau will appear in the regular Annual Department Report.

CHAS. E. PATTON,
Secretary of Agriculture.



THE GENERAL FEATURES OF THE BUREAU'S WORK DURING 1916

The general aims and policies of the Bureau have been so fully presented in the reports of recent years that they require no discussion at the present time, nor is there need for repeating them in this connection. The statements made in my preliminary report for 1915 regarding the scope and detail of the several classes of laws committed to the Dairy and Food Commissioner for enforcement and regarding the deficiencies in these laws that, in my opinion, are most deserving of the present attention of the Legislature, were sufficiently definite. I have no new suggestions to add to what I then said upon the subject.

The general character of the work performed by the Bureau during 1916 was very similar to that earlier reported for recent years. The classes of staple foodstuffs that exhibited most frequent departures from legal requirements have been those of local production and consumption. Food accessories, desert preparations, non-alcoholic drinks, and other manufactured food products of like character, are, of food products manufactured on a large scale made for other than purely local consumption, those which have exhibited the more frequent instances of nonconformity to the law.

It has been remarked in several of my reports for recent years that the examinations made of the principal classes of staple foods have shown relatively very little evidence of adulteration and misbranding. This condition is again shown by the work of this Bureau during the past twelve months.

ATTITUDE OF PRODUCERS AND DEALERS

America was settled by people who sought elbow room, and elbow room for the individual remains to this day an important part of the American ideal condition for happiness. We think that social condition the best, which affords the greatest freedom of opportunity for the individual; consequently, we are ever suspicious of legal proposals that tend to limit individual action, except with regard to those points of major importance for the preservation of community organization and good order. It has been difficult to make the readjustments which increase in population, more highly developed division of labor, the growth of our cities, and the improved means of transportation and communication have required for the welfare of our society as a whole. Every move that has looked to the curbing

of the individual for the sake of society in general has been viewed with suspicion and opposed as a matter of course. The American citizen has in none of his life relationships shown more suspicion and opposition to welfare movements than in those which affected his business interests and activities.

It was, of course, admitted as an abstract proposition that common honesty should exist between seller and buyer and between maker and user, yet there was an increasing tendency to regard business as a game governed by rules that were somewhat apart and different from those which admittedly should govern men in all other relations, unless it be those of love and war. This tendency to view business as a game was not without a good many compensating advantages. It probably increased the zest of business life and colored the daily business routine with some of the romance of adventure, but the general tendency was to make the customer appear more and more as a pawn upon the business chess board, an element necessary to business but requiring less and less of particular regard. The business competitors were the players who made the rules, and, so far as practicable, pawns were moved according to those rules. The pawns had nothing to do with making rules. Under such conditions, the existence of any ethics between the players and the pawns came to be more and more doubtful.

The time came when the pawns insisted upon helping to make the rules, and many of the players were much unsettled in mind because of this surprising attitude on the part of the pawns. There was vigous protest that anything of the kind outrageously violated the liberties of the players.

It may be safely assumed that groups of men engaged in various occupations, except those whose very nature panders to lax morality, are in general equal in honesty and in other moral qualities. It follows that the men who made and sold food products were on the average just as good as those who bought such products. There were a great many food makers and food merchants who could not bring themselves to regard business as a game in which the pawns had no say and were not entitled to consideration. Their common sense prevented their free acceptance of the game theory. Under the stress of competition and the general prevalence of rules established upon this theory, they did reluctantly a good many things which shadowed their happiness and peace of conscience. In fact, many of them were just as rebellious at the false conception of business ethics which the game theory developed as any consumer could be.

The rebellion of the consumer led, after years of public discussion, to the rejection of the theory that anything was fair in business on the part of the maker and seller, providing other makers and sellers

agreed to do the same thing, whether it be to tell the same lie to the consumer or to cheat him in any other way, except possibly in making change, for, after all, there were some limits of decency beyond which makers and dealers couldn't go without losing caste among their fellows. The change, even though it required the organization and maintenance of public control to insure honesty of dealer toward consumer, brought, after its practicability had been shown, fully as much satisfaction to most of the makers and dealers as it did to the consumers. While most of them at first regarded our newer types of food laws, insurance laws and railroad laws as curious kinds of unpractical, theoretical proposals, they presently began to see that there was after all much that was practical and valuable in these proposals, and before long leading business men became as earnest in advocating legislation of the kind as were any of their consumers.

It is only fair to say that the improvement in business honesty and in solicitous care for the welfare of the consumer has been owing as much, if not more, to the earnest co-operation of the business men of such great organizations as the National Canners Association, the Specialty Manufacturers' Association, and other like organizations, as it has been to the zeal and watchfulness of the executive officers charged with the enforcement of food and other similar control laws. In fact, these laws gave the honest business man a chance to be honest and still stay in business.

The facts stated in very general terms in the foregoing paragraphs carry an important suggestion concerning the policies that are likely to produce with the least expense and confusion the greatest measure of public good. In the heat of the strife that preceded the passage of the food laws and other laws of like character, it was a popular notion that the executive appointed to enforce these laws must be ever watchful, suspicious and aloof from all those over whom these laws required him to exercise supervision. It was just a reproduction of the old notion that a good birch in the hands of a stalwart man was not merely an instrument of punishment, but was the best means of education. Our educational ideas have changed, and while the birch is still kept somewhere about the school house, it is no longer regarded as the best means of education. The same broadening of judgment is taking place in the enforcement of control laws. By actual experience, it is found that educational and co-operative methods are more efficient in securing what the people want than is recourse to the methods of fine and imprisonment. Of course, there is sometimes need for the birch in the schoolhouse, and when used it ought to be employed with enough vigor to secure obedience to the law of the schoolhouse. The same thing is true

with respect to the enforcement of business control laws, and when counsel, warning and consultation fail to protect the people, the more drastic methods authorized by law must be unflinchingly applied if the executive officer is to be true to his trust.

There is something, however, more important than obedience, for obedience is, after all, a negative sort of quality. Self regulation growing out of the spirit of service is its active counterpart, and it is a happy thing for the American business man that he is coming so rapidly to see that there is nothing more conducive to that vague condition we call "happiness" than the realization that we are doing our best in giving good service. We all want the dollar, of course, but how much better that dollar is when we feel to the very bottom of our hearts that we have earned it. The business man has come somewhat to realize very distinctively that fact.

Thus it is happily true that the co-operative method is today an entirely practical method and is being used more and more extensively for the welfare of the average citizen. It is exceedingly gratifying to be able here to recognize and record this fortunate change of conditions.

JUDICIAL INTERPRETATION OF THE LAWS

Although the general food laws of the several states and of the National Government are very similar in form and expression and are, for the most part, expressed in clear and definite terms, the immense variety of materials and the variety of labeling methods and other conditions of sale have raised numerous questions requiring the judicial interpretation of these laws in their application to the various materials, labeling methods, etc. Most of the fundamental points giving rise to dispute have already been passed upon by the courts, but each year witnesses the issue of some judicial decisions of importance in the interpretation and application of these laws.

The Supreme Court of the United States has, during the past year, handed down three opinions of far reaching effect upon a number of points of much importance in the interpretation and application of these food laws. Of these opinions, we will first allude to that in the cases known as the Hutchinson Ice Cream Company, et al., plaintiffs in error, vs. The State of Iowa, and A. B. Crowl, plaintiff in error, vs. Commonwealth of Pennsylvania, which were argued together and made the subject of opinion delivered by Mr. Justice Brandeis. Because of their importance, the several judicial opinions in the Crowl case are given in full in the appendix, including the opinion of Judge Walling, the trial judge, that of Judge Henderson of the Superior Court of Pennsylvania in the hearing upon appeal, and finally, that of Mr. Justice Brandeis of the Supreme

Court of the United States. The reader is referred to the appendix for the decisions upon the several points on which the respective courts ruled. We will simply note at this place the chief point. The plaintiffs in error urged that inasmuch as the products frequently sold under the name of "ice cream" were composed of various selections of ingredients employed in different proportions and sometimes without the inclusion of any milk product whatever, that ice cream should be regarded as a confection whose composition bears no releation to its name, and that consequently a legislative act which requires that this commodity should contain not less than a stated amount of butterfat is in excess of the Legislature's police power, that it constituted a prohibition of the sale of certain groups of products previously sold as ice cream and worked in effect a violation of the fourteenth amendment of the United States Constitution. The United States Supreme Court held that "the legislature may well have found in these facts (as to the sales of products previously sold under the single name 'ice cream') pursuasive evidence that the public welfare required the prohibition enacted. . . . Laws designed to prevent persons from being misled in respect to the weight, measurement, quality or ingredients of an article of general consumption are a common exercise of the police power. . . . This court has repeatedly sustained the validity of similar prohibitions." The court further held, with respect to products not conforming with the legal standards established for ice cream, that the acts did not prohibit their sale but merely prohibited their sale as ice cream, accepting as binding upon this point the construction given to the Iowa act by the Supreme Court of that state, and declining to assume that the Supreme Court of Pennsylvania, which did not specifically construe the Pennsylvania act with respect to this point, would have construed it otherwise.

This decision has a far-reaching application.

The second case to which we allude is that of W. T. Price, plaintiff in error, vs. People of the State of Illinois. This case arose from a conviction in the Municipal Court of Chicago on account of a sale in that city of a preservative compound known as "Mrs. Price's Canning Compound," alleged to be intended as a "preservative of food," and to be "unwholesome and injurious in that it contained boric acid." The Illinois Food Law of 1907 declares that an article shall be deemed to be adulterated: In case of food: . . . If it contains any added poisonous or other added deleterious ingredients which may render such article injurious to health, and declares that boric acid, among other substances specifically named, is unwholesome and injurious. The same act, section twenty-two, prohibits the sale, etc., of any mixture or compound intended for use as a

preservative . . . in any food, but provides that this section shall not apply to pure salt added to butter and cheese. There was a stipulation of facts including the following points of interest under the Pennsylvania food law: That the compound contained boric acid; that it is not claimed to possess food value but is an antiseptic and may, among other uses, be employed to prevent canned fruits and vegetables from souring and spoiling, and that the declaration of these facts concerning its lack of nutritive quality, its being an antiseptic and the possible food preservative values of the preparation, were stated on a label printed on the small envelope in which the preparation was originally packed in the Minneapolis factory, where it was made and in which it was transported to Illinois and there sold. It was also stipulated that the fact that the material, without substantial difference in kind or proportion of ingredients, is an article of commerce, has for a period of years been sold under that distinctive name, is well known in a number of states of the Union as a distinctive article for use for canning by the housewife, and that it is not sold to manufacturers of food or canners of food for sale. In the Municipal Court trial, evidence offered by the defendant that there is no added ingredient of any kind whatever was rejected as not being addressed to the charge made; also, for other reasons, evidence that boric acid is not injurious to health and that the Price Canning Compound is not adulterated or misbranded in any way. The defense claimed that the statute was inapplicable to the case on trial, or, if applicable, was repugnant to the Constitution of the state, and to the commerce clause and the fourteenth amendment of the Federal Constitution. These claims were denied by the Municipal Court and the case taken upon appeal to the Supreme Court of Illinois. The State Supreme Court, construing this statute, held that section eight, dealing specifically with adulterated food, and section twenty-two, dealing specifically with the sale of preservatives, are parts of one act; that the effect of section eight, which specifically declares boric acid to be injurious and unwholesome, is therefore not limited to food containing that substance as an added ingredient, but applies also to food preservatives, although the latter may be specifically claimed not to have direct food value. As one ground for this construction, the State Supreme Court noted that preservatives containing unwholesome and injurious ingredients are fully as injurious if used by the housewife for food preservation as if they had been added by a manufacturer to such foods for placing on the market. The case was then taken on appeal of the State Supreme Court to the Supreme Court of the United States. The latter court declined to review the construction placed by the Illinois Supreme Court upon the Illinois food law of

1907, and accepted the construction of the State Supreme Court as to the meaning of the statute for determination of the validity of the act under the Federal Constitution. In brief, the opinion was that the legislative prohibition against the sale of food containing boric acid must be sustained as within its police powers, unless this prohibition is palpably unreasonable and arbitrary; that the statute, as applied, does not effect a deprivation of property without due process of law and a denial of the equal protection of the laws, contrary to the fourteenth amendment; that it is not enough that the conclusion of the Legislature in the matter of fact involved is debatable, as the Legislature is entitled to give effect of its own judgment, but that to set aside the legislative enactment here in question, it must be shown that boric acid must be beyond doubt classed as a wholesome article of commerce, so harmless in its designed use and so unrelated in any way to any possible danger to the public health that the enactment must be considered as a merely arbitrary interference with the property and liberty of the citizen. Further, the court notes that the judgment of the Illinois Legislature with respect to boric acid appears to have such support that it cannot be regarded as arbitrary. The court also held that it cannot be said that the Legislature exceeded the bounds of reasonable discrimination in classification when it enacted the prohibition in question relating to foods and compounds sold as food preservatives. The court therefore held that, with respect to these points relating to the fourteenth amendment of the Constitution, there was no ground to hold the statute to be repugnant to that amendment. Concerning the remaining contention by the plaintiff in error, that the article is not an adulterated food, and was not charged as such, but was an article of commerce manufactured in another state; and that the state of Illinois could not prohibit its introduction and sale in the course of interstate commerce, the court held it unnecessary to deal with the question in the scope thus suggested, but that the sole ground for involving the commerce clause for escape from the restrictions of the State law is connected with the question whether the article was sold in an "original package" as that term has been construed by the Supreme Court. In the opinion delivered by Mr. Justice Hughes, the Supreme Court held that, although it was conceded that defendant's witness, if sworn, would testify that the compound mentioned "is an article of commerce sold in Illinois, in the original package manufactured and made in Minnesota," nothing more having been shown as to the nature of the package, this admission as to "original package" was properly regarded as referring simply to the small package in the envelope which the state had described in its evidence before the Municipal Court. There was nothing to show that, in commercial shipments into the state, the small package was

segregated or separately introduced, and that presumption of such state of facts would not be justified. The court reaffirmed its frequent holding, to the effect that if these small packages were associated in their shipment into the State, and were subsequently sold separately or in various lots, these separate packages, although respectively in the original envelopes, would not be classed as "original package" within the rule invoked, so as to escape the local law governing domestic transactions. The courts therefore affirm the judgment of the Supreme Court of Illinois. The opinion in this case is presented in full in the appendix.

The third opinion was delivered by Mr. Justice Hughes on behalf of the Supreme Court of the United States in the case known as "The United States, plaintiff in error, vs. Forty Barrels and Twenty Kegs of Coca Cola. It includes a number of points of especial interest involving the interpretation of like clauses in the Pennsylvania Food Law. This opinion is not printed in the appendix, but was given in full in Circular No. 86, Office of the Solicitor, United States Department of Agriculture. The Pennsylvania Food Law of 1911 declares a food to be adulterated when it contains any added sulphurous acid, sulphur dioxide, boric acid, etc. The act also defines the term "food" to include, for the purposes of the act, all articles that enter as ingredients into the composition of food. The question has been raised under this act whether a material consisting of or containing boric acid as one of its chosen ingredients and sold under a non-declarative name for use in preserving food could be regarded as a food adulterated because it contained added boric acid. The Federal Food and Drugs Act declares that, in case of food, an article shall be deemed to be adulterated if it contains any added poisonous or other added deleterious ingredient which may render such article injurious to health. The question as to the meaning of the word "added" in the Federal Act was raised in the Coca Cola case. The opinion discusses at length the meaning which should be given to this word as it is used in the Federal Food Law, and its conclusion is stated as follows: "Congress, we think, referred to ingredients artificially introduced; these it described as 'added.'" Since the word "added" as used in the Pennsylvania Law has the same relation as shown for it in the Federal Law, it appears that if boric acid be a deliberately chosen material, whether it is sold alone under a non-descriptive name or in mixture with other substances for use as a food preservative, it should be regarded as "added" in the sense in which that term is used by the Pennsylvania Act. In the Coca Cola case, it was charged that the expression "Coca Cola" represented the presence in the product of the substances coca and cola and that it contained "no coca and little if any cola." The lower

courts had held to the opinion that the name "Coca Cola" was to be regarded as a distinctive name, not necessarily a declaration of the composition of the article sold under it, but the Supreme Court held with respect to distinctive names: "A mixture or compound may have a name descriptive of its ingredients or an arbitrary name. The latter (if not already appropriated) being arbitrary, designates the particular product. Names, however, which are merely descriptive of ingredients are not primarily distinctive names save as they appropriately describe the compound with such ingredients. To call the compound by a name descriptive of ingredients which are not present is not to give it 'its own distinctive name'—which distinguishes it from other compounds—but to give it the name of a different compound. That, in our judgment, is not protected by the proviso, unless the name has achieved a secondary significance as descriptive of a product known to be destitute of the ingredients indicated by its primary meaning."

This opinion in its decision upon the two points above quoted has a far-reaching effect.

SUMMARY OF THE BUREAU'S ACTIVITIES DURING 1916

At this point will be presented a summary of the Bureau's operations during the past year. Matters of detail requiring special mention will be reserved for a later section of the report. During 1916, the chemists of the Department analyzed 5,807 samples of various food stuffs, and there were terminated 1,093 prosecutions for violations of the Food Laws. The several classes of materials on account of whose adulteration and misbranding these prosecutions were instituted, are as follows: milk, 341; coffee and chicory, 3; cold storage foods, 109; eggs, 20; foods, 240; fruit syrup, 1; ice cream, 12; lard, 18; non-alcoholic drinks, 222; oleomargarine, 97; renovated butter, 2; sausage, 10; vinegar, 18.

The continued vigilance of field agents and the growing use of oleomargarine have resulted in the collection, during the past year, of about $33,000.00 more from oleomargarine license fees than were collected in 1915, although that was a record year.

To afford an idea of the growth of the Bureau's work and of its cost to the people the following comparative statement covering the years 1907 to 1916, has been prepared:

Year.	Samples Analyzed.	Cases Terminated.	Receipts.	Expenditures.
1907,	7,400	664	$55,732 63	$78,455 88
1908,	8,300	300	54,580 62	60,968 20
1909,	6,200	797	86,594 15	83,700 00
1910,	5,594	667	110,892 95	79,661 65
1911,	8,200	1,029	120,993 48	83,083 15
1912,	7,204	1,049	136,125 49	81,858 55
1913,	6,846	1,025	173,789 76	75,587 12
1914,	4,827	1,010	225,910 78	73,271 41
1915,	8,939	1,165	279,055 40	85,901 36
1916,	5,807	1,093	303,367 03	77,931 97
Totals,	69,317	8,799	$1,546,952 29	$789,419 29

This table shows that the receipts for the year 1916, which are deposited with the State Treasurer for the use of the Commonwealth, were $225,435.06 in excess of the expenditures, which are provided for by a special appropriation, and that for the entire period of ten years the total receipts were $757,533.00 in excess of the expenditures.

In addition to the work summarized in the foregoing table, there was issued in 1916 Bulletin No. 285 on the subject of flavoring extracts, written by Dr. C. H. LaWall of this Bureau and representing the systematic study of the flavoring extracts found on sale in the markets of the State. This survey, while it shows that the frauds of adulteration and misbranding practiced in the case of flavoring extracts have been very greatly reduced in proportion, they have not yet been wholly eliminated.

COMMENTS UPON ADULTERATIONS IN PARTICULAR CLASSES OF FOODS

The 5,807 food samples analyzed in 1916 represent the several groups of food products in the following proportions:

Butter,	328
Cheese,	1
Cream,	649
Milk,	2,938
Cold Storage Products,	120
Eggs,	206
Fruit Syrups,	7
Ice Creams,	150
Lard,	31
Non-Alcoholic Drinks,	382
Oleomargarine,	28
Renovated Butter,	1
Sausage,	41
Vinegar,	2
Other Food Products,	923
	5,807

A detailed statement concerning the subordinate kinds of foods examined is presented as Article I to the appendix of this report, and in Article II of the same appendix is presented the classified list of the cases terminated, including a statement of the kinds of food which were adulterated and misbranded and of the general nature of the several offenses. It is here noted, as in preceding reports, that the cases terminated do not correspond precisely with those whose analyses are here presented. This is due to the fact that in many cases there is necessarily a considerable interval of time between the report of the chemist and the final conclusion of the court proceedings; but for the purposes of a general comparison this difference may be overlooked.

OLEOMARGARINE AND RENOVATED BUTTER

The nature of the material sold under the name "Oleomargarine" and the conditions of sale have been the subject of continuous vigilance of the Bureau's agents. Instances of suspicious coloration have been very few. The total number of samples of oleomargarine and of suspected butter analyzed during 1916 were only twenty-eight. There were terminated ninety-seven cases for violation of the act, most of the cases coming over from 1915, in which coloration in violation of the act was alleged and established in sixty-nine cases; improper stamping in two cases; serving in restaurant without a license, one case; selling at retail without a license, twenty-five cases; selling at wholesale without a license, one case. Although but ninety-seven cases were involved, the several offenses were charged in each of a number of these cases, which accounts for the apparent excess in the number of offenses listed in the preceding sentence.

But one sample of renovated butter was presented for analysis during the past year, and two cases terminated because of failure to properly stamp the goods and for selling without a license. This article continues to be produced and sold in Pennsylvania in very small volume.

VINEGAR

In view of the very large number of examinations of market vinegars made during the preceding two or three years, attention was concentrated in 1916 upon other products and but few samples of vinegar taken for examination. Eighteen cases were terminated in 1916 involving adulterations of this article. In the case of cider vinegar, there were five such cases; three involving added water, and two because of adulterations not specifically listed. Two samples consisting of acetic acid and water were sold as cider vinegar, and in another case distilled vinegar was sold under the name of the apple product. In another case, adulteration with glucose was found, and

in three other cases, articles sold as fermented syrup vinegar were found to consist of distilled vinegar colored with caramel. Six cases affected distilled vinegar either with respect to low acidity or artificial coloration.

MILK

Of milk samples, there were analyzed twenty-eight hundred and ninety-three, and adulterations of this article were the basis of three hundred and forty-one cases, and two hundred and seventy-four cases terminated. In but three of these instances were the prosecutions based upon the presence of a preservative, formaldehyde. In one hundred and seventy-five cases, the samples analyzed were found to be below standard in either milk fat or solids, or both. Skimming was charged in forty-four cases, and watering in fifty-four. There was one case of adulteration found in the case of evaporated milk, three in the case of buttermilk and forty-one in the case of skimmed milk. Prosecutions with respect to skimmed milk were terminated in nine cases; five on account of watering, and four for the sale of skimmed milk for milk. Six hundred and forty-nine samples of cream were examined, and fifty-eight cases terminated because the article was found to have been below standard in butterfat.

The use of preservatives in milk happily continues to be very rare. The proportion of cases in which the evidence was sufficient to sustain charges of watering and skimming was much lower than in the corresponding exhibit for 1915. In 1915, out of each one hundred samples of milk sold, thirteen were found deficient in fat; in 1916, the proportion of fat deficiencies was only nine in each hundred.

BUTTER AND CHEESE

Three hundred and twenty-eight samples of butter and one sample of cheese were analyzed during the past year, but no cases appeared involving violation of the law. This was a repetition of the conditions obtaining in 1915.

ICE CREAM

One hundred and fifty samples of ice cream and water ice were analyzed, including, however, only five samples of the ices and one sample of so-called "milk balls." Twelve prosecutions under the Ice Cream Act were terminated in 1916, all because of deficiencies in the quantity of milk fat found. There continues to be a very marked improvement in fat richness of the articles sold in Pennsylvania under the name "ice cream."

SAUSAGES

Of these materials, forty-one were analyzed in 1916, and during that year, there were terminated ten cases: six brought because of the addition of cereals or vegetable flour, and four because of such additions together with added water. In the case of this class of foods also, the conditions as to adulteration with cereals and added water continue to exhibit a great improvement over those existing before the passage of the Sausage Act.

LARD

Thirty-one samples of lard were analyzed in 1916, and eighteen cases terminated. Of these, one was brought because the article was sold as fresh lard, whereas it was a compound lard not properly marked, while in seventeen cases, the articles proved to be imitation lard, consisting chiefly of cottonseed oil and stearin. In this, as in other classes of food supplies sold from groceries and meat shops, it must be constantly borne in mind that the proportion of cases instituted to the number of samples examined is much larger than the real proportion of adulteration in the total amount of these commodities sold in the markets. This is the result of the agents' practice of buying for analysis chiefly those articles which are for some reason suspected.

EGGS

Of eggs other than those found in cold storage, there were examined in 1916, two hundred and six samples, of which one hundred and seventy-seven were fresh in the shell. The other samples included eggs opened, in the shell, frozen eggs, and desiccated eggs. There were terminated, during the year, twenty cases for violation of the Egg Act of 1909: three because stale eggs were sold as fresh, fourteen because they were unfit for food purposes and not properly denatured, and three additional cases of these same kind where the eggs had been sold for bakers' use.

COFFEE

Three cases were terminated under the Coffee and Chicory Act of 1915 because of the sale of the articles as coffee, whereas they consisted of compounds containing cereals.

NON-ALCOHOLIC DRINKS

Non-alcoholic drinks were effectively sampled and analyzed, the chemists having reported on three hundred and eighty-two such samples. There were terminated two hundred and twenty-two cases because of violations of the Non-Alcoholic Drinks Act of 1909. Four

of these cases were brought because of the presence, in excessive amounts, of alcohol; eighteen because saccharin was present. Most of the remaining cases were brought because the articles were sold under names indicating normal products, whereas, in fact, they were imitations. This survey of conditions in respect to non-alcoholic drinks indicates a continued improvement with respect to the use of saccharin, but a very large proportion of fraud is, the sale of imitation products under the names of the corresponding normals.

ARTICLES SUBJECT TO THE GENERAL FOOD LAW OF MAY 13, 1909

Of these groups of food materials, nine hundred and twenty-three were examined, a number substantially equal to those articles of like character examined in 1915, and during the year, two hundred and forty cases brought because of violations of this act, were terminated. Of special interest with respect to these cases may be noted the fact that the ground of prosecution was the presence of sulphur dioxide in two cases of dried apricots, twenty cases of cherries sold in jars and twelve of so-called Maraschino cherries, three lots of dried figs, six samples of dried peaches, a sample of prunes and two of raisins. Because of the presence of benzoate of soda, either undeclared or in amounts beyond the legal tolerance, cases were brought in six cases of codfish and two of tomato ketchup. Because of the presence of boric acid, cases were brought affecting a canning compound and two lots of dried fish, while the presence of added nitrous acid led to two prosecutions affecting flour. This condition with respect to the use of the prohibited preservatives is comparatively excellent in contrast with the conditions existing before the passage of food laws. Cases due to decomposition and unfitness in other respects for food use involved forty-nine cases, relating to meats, eggs, nuts, cereals, sauerkraut, etc. It cannot be expected that the market will ever be entirely free from products that have undergone decomposition during their holding for sale. Only the greatest vigilance can keep the proportion of such decomposed food materials down to a low figure. Unfortunately, the language of the food law limits the method which the Food Commissioner may use to discover such materials. Of the remaining cases, many were brought because of misbranding or because they were deficient in some valuable material; or, because they had been diluted with some other substance, particularly water. Of the latter class were three samples of butter containing excessive moisture, and fifty-six samples of watered oysters.

COLD STORAGE FOODS AND COLD STORAGE WAREHOUSES

The Bureau has steadily maintained the examination of cold storage warehouses with respect to their having taken out the requisite

license, maintained suitable sanitary conditions, and observed the legal requirements, with respect to markings, specified in the law.

One hundred and twenty samples of various stored meats, poultry, fish, butter and eggs were examined by the chemists. During 1916, there were terminated one hundred and nine cases under the provisions of this act: four because of the storage of foods beyond the legally specified limits; eighty-seven because of failure to stamp as required by law; one for re-entry in cold storage after withdrawal for sale; seventeen because cold storage foods had been offered for sale as fresh foods. As a result of the year's examinations, it is believed that the conditions of sanitation and soundness of the cold storage foods held in the State may properly be regarded as excellent. It is more difficult to determine the completeness with which the law is obeyed as to the marking of cold storage foods in the hands of the retailer.

The following table shows the quantities of the several more important groups of food in cold storage at the end of the several quarters of 1916. In view of the existing conditions of demand and supply for cold storage foods, it is interesting to compare the amounts held in storage during corresponding quarters of the years 1915 and 1916. The comparisons will be chiefly confined to the quarters ending March 31st and December 31st, and to the products commonly stored in greater quantity. Of beef, in whole carcasses, there was stored on March 31, 1915, eight hundred and eighty-three thousand six hundred and twenty-three pounds, and on March 31, 1916, three hundred and fourteen thousand three hundred and three pounds; and on December 31, 1915, five hundred and eighty-eight thousand six hundred and eighty-five pounds, and on the same date in 1916, six hundred and twelve thousand, six hundred and seven pounds. That is, the spring storage of beef and whole carcasses was much less in 1916 than in the same month in the preceding year, but there was no great difference in the amounts of beef carcasses in storage at the end of the last quarter of the two years. Of beef not classified, parts of carcasses, there was stored on March 31, 1915, about one million and a half pounds; on March 31, 1916, a little over seven hundred thousand pounds. Of hogs' carcasses, the amount stored on March 31, 1916, was a little over two-fifths of the amount found at the corresponding date in 1915, and on December 31st, the amount was only one-half of that found in 1915. Of hogs stored, not classified parts of carcasses, the amount at the end of March, 1916, was about three-fourths of the amount found March 31, 1915, but on Decemebr 31, 1916, the amount was found a little greater than that found on the same date in 1915. With respect to fish, the amount found at the end of March, 1916, was two and a half times as much as was found at the same time

in 1915, while the amount found in December 31, 1916, was but three-fourths of that found at the same time in the preceding year. Of domestic poultry, the amount at the end of March of the past year was about two-thirds as much as for the same date in 1915, but the amount found at the end of December 31, 1916, was nearly twice as great as that found in 1915. For eggs, we will compare the amounts held at the end of June in each year, confining attention to eggs in shell. In 1915, there were eighteen million eight hundred thousand one hundred and sixty-nine dozen of eggs in storage on June 30; in 1916, about fifteen million five hundred thousand. In the case of butter, the quantity in storage ending September 30th will be used for comparison. At that date in 1915, there were in storage about nine million seven hundred and fifty thousand pounds, and in 1916 about nine million five hundred thousand pounds. While these comparisons are of much interest, it is difficult to deduce from them any very exact notion of the total amount of cold storage foods held in Pennsylvania cold storage warehouses through the entire year. Some of these quarterly accounts undoubtedly represent identical packages, wherein in other cases doubtless large amounts of foods have entered the warehouses and been withdrawn within the period of the quarter. To offer some notion of the relative magnitude of this business and of the exceedingly valuable service rendered by cold storage warehousemen to the food consuming public, there cannot be too much emphasis placed upon the fact that the development of this business has been a great boon to the food consumer and that all that needs to be condemned with respect to its conduct, as far as the Pure Food Laws are concerned, are occasional instances of unsanitary condition, rare instances of storage for excessive periods, and failure to make known to the buying public that the foods are cold storage foods. Emphasis should be placed upon the last point, not because cold storage foods are themselves unfit for use, but only because they deteriorate more rapidly after withdrawal from storage than is the case with fresh foods, and so need to be handled with especial care and consumed promptly after their removal from the cold air of the warehouse.

ACKNOWLEDGMENTS

It is again my privilege to express my appreciation of the hearty support rendered to me by my office force, special agents, counsel and food experts. I am under special obligation also to the Attorney General's Office, more especially to Deputy Attorney General William M. Hargest, to whom is committed the care of the legal phases of the work of this Bureau.

My acknowledgments are due also to Governor Brumbaugh and to yourself, for continued encouragement and support in the work assigned to me.

Yours very respectfully,

JAMES FOUST,
Dairy and Food Commissioner.

APPENDIX

SUMMARY

I. LIST OF ARTICLES ANALYZED BY CHEMISTS OF THIS BUREAU DURING THE YEAR 1916

Article.	Number Analyzed.
COLD STORAGE PRODUCTS:	
Beef,	1
Beef kidneys,	3
Butter,	4
Chicken,	1
Eggs,	83
Fish,	5
Fish, Butter,	3
Fish, Mackerel,	1
Fish, Perch,	1
Fish, Sea Bass,	1
Fish, Smelts,	12
Sweet Breads,	1
Turkey,	4
	120
DAIRY PRODUCTS:	
Butter,	328
Cheese,	1
Cream,	649
Milk, butter,	3
Milk, evaporated,	1
Milk, skimmed,	41
Milk,	2,893
	3,916
EGGS:	
Desiccated eggs,	6
Dried egg content,	2
Fresh, in shell,	177
Frozen,	6
Frozen egg content,	6
Liquid egg content,	3
Opened,	6
	206
FRUIT SYRUPS:	
Cherry,	1
Grape,	1
Lemon,	1
Orange,	2
Raspberry,	1
Vanilla,	1
	7
ICE CREAMS AND WATER ICES:	
Chocolate,	3
Maple,	1
Ice cream (no flavor given),	4
Strawberry,	3
Vanilla,	133
Lemon water ice,	4
Milk Balls,	1
Strawberry ice,	1
	150
LARD,	31

SUMMARY—Continued

Article.	Number Analyzed.
NON-ALCOHOLIC DRINKS:	
Ale, Ginger,	11
Ale, Scotch Hop,	1
"Apella",	1
"Beverage",	1
Birch Beer,	5
Bis Mac,	1
Bludwine,	1
Champagne Fizz,	1
"Cherry",	2
Cherry Cheer,	3
Cider, Apple Compound,	2
Cider, Orange,	2
Cider, Sweet,	16
"Gay Ola",	1
Grape juice,	1
"Ironbeer",	1
Jamaica Ginger,	1
Lemonade,	5
Lemon Sour,	2
Malt Mead,	1
Orangeade,	9
Orange Beverage,	1
Orange Julep,	3
"Oxo",	1
"Parfay",	1
Penn-Cola,	1
Phosphate, Cherry,	1
Pop, Birch,	1
Pop, Cherry,	6
Pop, Cider,	1
Pop, Grape,	4
Pop, Lemon,	6
Pop, Orange,	1
Pop, Peach,	3
Pop, Raspberry,	30
Pop, Strawberry,	115
Punch, Grape,	1
"Raspberry",	1
Sarsaparilla,	3
Smash, Cherry,	9
Smash, Grape,	5
Soda, Cherry,	14
Soda, Cream,	3
Soda, Lemon,	12
Soda, (no flavor given),	1
Soda, Orange,	13
Soda, Peach,	1
Soda, Pear,	1
Soda, Raspberry,	26
Soda, Strawberry,	29
Soda, Vanilla,	9
"Sparkade",	1
"Strawberry",	4
Summer Drink, (strawberry flavor),	1
Temperance Beer,	1
Tokay Crush,	1
"Wy-ne",	1
Wyo-Cola,	1
Zizz,	1
	382
OLEOMARGARINE,	28
RENOVATED BUTTER,	1
SAUSAGE:	
Sausage, Bologna,	7
Sausage, Fresh Pork,	18
Sausage, Frankfurters,	5
Sausage Polish,	2
Sausage, Pork and Beef,	1
Sausage meat,	2
Sausage, Vienna,	5
Sausage, Wieners,	1
	41

SUMMARY—Continued

Article.	Number Analyzed.
VINEGAR:	
Vinegar, Cider,	2
	2
FOOD PRODUCTS.	
CAKES AND PUDDINGS:	
Cake, Almond,	1
Cake, Cup,	1
Cake, Currant,	1
Cake, Drop,	1
Cake, Lady Fingers,	1
Cake, Mity-Nice,	1
Cake, (no name given),	2
Cake, Pound,	1
Cake, Sponge,	1
Cake, Tasty,	1
Gelatin,	1
Jello (cherry flavor),	1
Puddine,	1
Rolls,	1
CANNED FRUITS AND VEGETABLES:	
Cherries,	51
Cherries, Maraschino,	46
Mushrooms,	1
Peaches,	1
Peas,	1
Sauer Kraut,	6
Tomatoes,	2
DRIED FRUITS:	
Apricots,	2
Dates,	1
Figs,	2
Peaches,	8
Prunes,	2
Raisins,	10
CONFECTIONERY:	
Brown candy babies,	1
Candy,	2
Candy baskets,	1
Candy nougats,	1
Caramels,	1
Chocolate candy animals,	2
Chocolate candy babies,	1
Chocolate candy cigarettes,	1
Chocolate creams,	4
Cocoanut creams chocolate coated,	1
Cream candy dolls,	1
Fudge, chocolate,	5
Glace fruit,	5
Glace nuts,	1
Grab Bag candy,	1
Licorice sticks,	1
Lolly Pops,	1
Marshmallows,	11
Peanut candy,	1
Prize Bag candy,	1
Walnut candy tarts,	1
FLAVORING EXTRACTS AND ESSENCES:	
Almond, Essence of,	1
Almond, Extract of,	7
Almond flavoring,	1
Birch-Wintergreen flavoring,	1
Celery, Extract of,	1
Jamaica Ginger, Essence of,	1
Lemon, Essence of,	2
Lemon, Extract of,	39

SUMMARY—Continued

Article.	Number Analyzed.
FOOD PRODUCTS—Continued.	
FLAVORING EXTRACTS AND ESSENCES—Continued.	
Lemon flavoring,	1
Lemon, Imitation,	2
Lemon Substitute,	1
Lemon and Citral Compound flavoring,	1
Orange, Essence of,	1
Orange, Extract of,	7
Orange flavoring,	2
Pineapple, Extract of,	1
Raspberry, Extract of,	4
Vanilla, Compound of,	3
Vanilla, Essence of,	2
Vanilla, Extract of,	93
Vanilla flavoring,	6
Vanilla, Imitation,	2
Vanilla Substitute,	5
Vanilla and Tonka Compound, Extract of,	1
Vanilla, Vanillin and Coumarin flavoring,	1
Vanillin, Extract of,	2
Vanillin and Coumarin, Extract of,	1
Vanillin and Coumarin flavoring,	1
Vanillin and Coumarin Substitute,	1
Wintergreen, Essence of,	2
Wintergreen, Extract of,	5
FLOUR:	
Flour, Buckwheat,	5
Flour, Rye,	1
Flour, Wheat,	169
FRUIT BUTTERS, JAMS, JELLIES AND PRESERVES:	
Butter, Peanut,	1
Jam, Gooseberry	1
Jam, Plum-Apple Compound,	1
Jam, Raspberry-Currant,	1
Jelly, Apple,	2
Jelly, Currant,	1
Jelly, Grape,	2
Preserves, Blackberry,	2
Preserves, Peach	1
Preserves, Pineapple,	1
Preserves, Strawberry,	2
KETCHUPS, OILS, PICKLES, ETC.:	
Conserve, Tomato,	1
Horseradish,	11
Ketchups,	21
Oil, Olive,	6
Oil, Salad,	2
Olives,	1
Relish,	1
Sauce, Tomato,	3
Pickles, Sweet,	1
Pickles, Sweet Mixed,	4
Pickles, Sweet Spiced,	1
FISH, CANNED, DRIED AND FRESH:	
Codfish,	20
Codfish, Boneless,	1
Codfish, Dried,	10
Codfish, Flaked,	1
Codfish, Salted	1
Codfish, Shredded,	3
Codfish, Threaded,	4
Eels, Fresh,	1
Fish, Dried,	2
Fish, Flaked,	2
Fish, Fresh,	7
Fish Middles,	1
Mackerel, Fresh	1
Oysters, Fresh,	101
Sardines, Canned,	1
Shrimps, Canned,	3

SUMMARY—Continued

Article.	Number Analyzed.
FOOD PRODUCTS—Continued.	
MEATS, CANNED AND FRESH:	
Bacon, Breakfast,	1
Beef kidneys,	1
Goat meat,	16
Ham,	6
Ham, Deviled,	1
Ham, Minced,	1
Lamb,	2
Liver Pudding,	2
Meat, Ground,	2
Meat, Potted,	1
Muskrats,	1
Mutton,	1
Neck Bone, with meat,	1
Opossums,	2
Pork and Beans, canned,	1
Rabbits,	1
Steak, Beef,	1
Steak, Hamburg,	30
Steak, Sirloin,	1
Steak, Tenderloin,	1
NUTS:	
Chestnuts,	1
Peanuts, Roasted,	5
Peanuts, Salted,	1
Pecan nut meats,	2
Walnuts, Black,	1
Walnut, Black, meats,	2
Walnuts, English,	2
Walnut, English, meats,	2
MISCELLANEOUS:	
Baking Powder,	1
"Beer",	1
Blackberries,	1
Breakfast Food, (Uncle Sam's),	2
Canning Compound,	1
Cocoa,	1
Coffee, Ground,	2
Confectioners' glaze,	1
Crackers, Lunch,	1
Cream Thickening,	1
Grenadine Syrup,	1
Grapes,	1
Gum Tragacanth (whole),	1
Honey,	3
Lentils,	1
Macaroni,	1
Mapleine,	1
Mustard, Prepared,	2
Noodles,	3
Peaches,	1
Peach Sauce,	1
Pepper, Black,	1
Potatoes,	2
Raspberries,	1
Roman Meal,	1
"Sago",	1
Scrapple,	2
Spaghetti,	1
Sugar, Granulated,	1
Sugar Wafers,	1
Sweet Breads,	1
Tomato Paste,	1
Tomato Stock,	1
Yeast, Magic, (dried),	1
	923

SUMMARY—Continued

Article.	Number Analyzed.
RECAPITULATION.	
Butter,	328
Cheese,	1
Cream,	649
Milk,	2,938
Cold Storage Products,	120
Eggs,	206
Fruit Syrups,	7
Ice Creams,	150
Lard,	31
Non-Alcoholic Drinks,	382
Oleomargarine,	28
Renovated Butter,	1
Sausage,	41
Vinegar,	2
Food Products,	923
	5,807

II. CASES TERMINATED

THE FOLLOWING TABLE GIVES A LIST OF ARTICLES ANALYZED BY CHEMISTS AND FOUND TO BE IN VIOLATION OF THE FOOD LAWS, AND THE NUMBER OF SAMPLES OF EACH PRODUCT ON WHICH PROSECUTIONS WERE BASED AND TERMINATED.

COFFEE AND CHICORY ACT, 1915, IN VIOLATION OF—

Compound Coffee, containing cereals,	1
O-So-Good Blend Coffee, containing cereals,	2
	3

COLD STORAGE ACT, 1913, IN VIOLATION OF—

Cold Storage Beef, stored beyond the legal limit,	2
kidneys, stored beyond the legal limit,	1
Cold Storage Butter, not properly marked,	3
Cold Storage Eggs, sold as and for fresh eggs,	15
not properly marked,	57
Cold Storage Fish, not stamped as required by law,	12
Cold Storage Pigs's Ears, not stamped as required by law,	1
Cold Storage Pork, re-entered in cold storage after having been withdrawn,	1
shoulders, not properly marked and sold as fresh,	1
Cold Storage Sausage, not properly marked and sold as fresh,	1
Cold Storage Smelts, not stamps as required by law,	13
Cold Storage Sweet Breads, stored beyond the legal limit,	1
Cold Storage Turkey, not stamped as required by law,	1
	109

EGG ACT, 1909, IN VIOLATION OF—

Eggs, decomposed, not properly denatured and broken,	3
stale eggs sold as fresh,	3
in shell, unfit for food purposes,	10
opened, unfit for food purposes, and not denatured,	1
unfit for food purposes, to be used in bakery,	3
	20

FOOD ACT, 1909, IN VIOLATION OF—

Apricots, dried, contained sulphur dioxide,	2
Bacon, unfit for food purposes,	1
Blackberries and Raspberries, unfit for food purposes,	1
Butter, contained excessive water,	3
Cakes, currant, colored with coal tar dye,	1
Canning compound, made entirely of boric acid,	1
Candy, coated with shellac,	3
coated with resinous glaze,	4
dirty and filthy, unfit for food,	4
imitation, for pure candy, chocolate,	1

CASES TERMINATED—Continued

FOOD ACT, 1909, IN VIOLATION OF—Continued.

Cherries, canned, contained sulphur dioxide,	26
Maraschino, contained sulphur dioxide,	12
Chestnuts, unfit for food purposes,	1
Chicken, unfit for food purposes,	1
Coffee, contained chickory,	1
compound, misbranded,	1
Crackers, milk, unfit for food purposes,	1
Eggs, stale eggs sold for fresh,	10
unfit for food purposes,	9
Egg Noodles, artificially colored in imitation of eggs,	3
Extracts, lemon, contained wood alcohol,	1
misbranded,	3
orange, deficient in oil, and artificially colored,	1
misbranded,	1
vanilla, low in vanilla resins,	1
misbranded,	6
Figs, dried, contained added sulphur dioxide,	3
dried, unfit for food purposes,	1
Fish, cod, contains an excessive amount of sodium benzoate,	6
dried, contained boric acid,	2
fresh, unfit for food purposes,	1
shad, unfit for food purposes,	1
sardines, misbranded,	1
unfit for food purposes,	1
Flour, contained added nitrous acid,	2
Glace Fruit, contained sulphur dioxide,	7
Goat Meat, sold as and for mutton,	10
unfit for food purposes and sold for mutton,	2
Ham, unfit for food purposes,	2
Hamburg Steak, unfit for food purposes,	2
Macaroni, artificially colored with coal tar dye,	1
Mace, contained Bombay Mace,	1
Meat, Capicola Meat, unfit for food purposes,	1
unfit for food purposes,	3
Milk, low in fat,	1
skimmed,	1
Oleomargarine, colored sold for butter,	1
Olive Oil, adulterated with cotton seed oil,	2
Opossum, unfit for food purposes,	1
Oysters, contained added water,	56
Peaches, contained undeclared sulphur dioxide,	6
unfit for food purposes,	2
Pickles, sweet, contained excessive amount of benzoate soda,	2
Potatoes, unfit for food purposes,	2
Prunes, dried, contained undeclared sulphur dioxide,	1
Raisins, dried, contained undeclared sulphur dioxide,	2
Sago, unfit for food purposes,	1
Salad-oil, contained mineral-oil,	1
Sauer-Kraut, unfit for food purposes,	1
Strawberry-ice, artificially flavored and colored,	1

CASES TERMINATED—Continued

FOOD ACT, 1909, IN VIOLATION OF—Coutinued.

Syrup, Greuadine, colored with coal tar dye,	1
Tomato, catsup, coutained excessive amount of beuzoate of soda,	2
misbrauded,	2
uufit for food purposes,	4
conserves, adulterated,	1
Paste, unfit for food purposes,	3
stock, unfit for food purposes,	1
Violatiou of the Food Act,	3
Waluuts, English, unfit for food purposes,	1
Yeast, Magic, unfit for food purposes,	1
	240

FRUIT SYRUP ACT, 1905, IN VIOLATION OF—

Syrup, orange, colored with coal tar dye,	1
	1

ICE CREAM ACT, 1909, IN VIOLATION OF—

Ice Cream, Chocolate, below the standard in fat,	1
Vanilla, below the standard iu fat,	11
	12

LARD ACT, 1909, IN VIOLATION OF—

Lard, compound, uot properly marked, sold as fresh lard,	1
Imitatiou lard, contaiued cottonseed oil and stearin,	17
	18

MILK ACT, 1911, IN VIOLATION OF—

Cream, low in butter fat,	58
Milk, containing formaldehyde,	3
low in butter fat,	13
low in butter fat and solids,	158
low in butter fat and solids, partially skimmed,	4
low in butter fat and solids, skimmed,	39
low in butter fat and solids, skimmed and watered,	1
low in butter fat and solids, watered,	30
low in solids,	3
low in solids, watered,	9
watered,	14
Skimmed milk, for fresh,	4
watered,	5
	341

NON-ALCOHOLIC DRINK ACT, 1909, IN VIOLATION OF—

"Beverage," an alcoholic drink sold for a non-alcoholic beverage,	1
Cherry Cheer, artificially colored and flavored, contained no cherry,	2
misbranded,	1
Cherry Phosphate, artificially colored and flavored, sweetened with saccharin,	1
Cherry Smash, misbranded; artificially colored and flavored, contained no cherry,	4

CASES TERMINATED—Continued

NON-ALCOHOLIC DRINK ACT, 1909, IN VIOLATION OF—Continued.

Cider, Apple compound, contained an excessive amount of alcohol,..... 1
Cherry-Apple compound, contained an excessive amount of alcohol, 1
Orange, misbranded; artificially colored and flavored, contained no orange, ... 2
Sweet, contained added water, ... 1
Ginger Ale, artificially colored and flavored, sweetened with saccharin,.. 1
Grape Smash, artificially colored and flavored, contained no grape juice, 2
Iron Beer, contained no iron, misbranded,..... 1
Jamaica Ginger, deficient in ginger,..... 1
Orangeade, artificially colored, ... 1
contained saccharin, ... 1
misbranded, artificially colored and flavored, contained no orange juice, ... 6
Orange Beverage, misbranded, ... 1
Pop, Cherry, artificially colored and flavored, misbranded,..... 6
Grape, misbranded; artificially colored and flavored, contained no grape juice, ... 2
Peach, misbranded; artificially colored and flavored, contained no peach juice, ... 2
Raspberry, misbranded; artificially colored and flavored, contained no raspberry, ... 10
Strawberry, misbranded, ... 20
misbranded; artificially colored and flavored; contained no strawberry, ... 61
Root Beer, artificially colored, ... 1
contained saccharin, ... 4
Soda, Cherry, misbranded, artificially colored and flavored, contained no cherry, ... 6
Chocolate, misbranded, artifically colored and flavored, contained no chocolate, ... 2
Grape, misbranded, artificially colored and flavored, contained no grape, ... 1
Lemon, contained saccharin, ... 2
misbranded, ... 5
misbranded, artificially colored and flavored, contained no lemon, ... 4
Orange, misbranded, ... 5
misbranded, artificially colored, ... 2
misbranded, artificially colored and flavored, contained no orange, ... 3
Peach, misbranded, contained no peach, ... 2
Pear, misbranded, artificially colored and flavored, contained no pear, ... 1
Pineapple, misbranded, artificially colored and flavored, contained no pineapple, ... 1
Raspberry, artificially colored, ... 1
contained saccharin, ... 1
contained saccharin, ... 1
misbranded, ... 2
misbranded; artificially colored and flavored, contained no raspberry, ... 8

CASES TERMINATED—Continued

NON-ALCOHOLIC DRINK ACT, 1909, IN VIOLATION OF—Continued.

misbranded; artificially colored and flavored, contained no raspberry; sweetened with saccharin,	4
Strawberry, artificially colored,	1
artificially colored and flavored, contained no strawberry,	14
contained saccharin,	3
misbranded,	3
misbranded, artificially colored and flavored, contained no strawberry,	12
Vanilla, flavored with coumarin in imitation of vanilla,	1
Wild Cherry, misbranded, artificially colored and flavored, contained no wild cherry juice,	2
Zizz, an intoxicating drink sold for a non-alcoholic beverage,	1
	222

OLEOMARGARINE ACT, 1901, IN VIOLATION OF—

Oleomargarine, colored,	29
colored, served with meal,	15
colored, served with meal, no license,	4
colored, sold as and for butter,	5
colored, sold as and for butter, no license,	8
colored, sold without a license,	8
not properly stamped,	1
not properly stamped, sold for butter,	1
served in restaurant, no license,	1
sold at wholesale without a license,	1
sold at retail without a license,	24
	97

RENOVATED BUTTER ACT, 1901, IN VIOLATION OF—

Renovated Butter, not properly stamped; sold without a license,	2
	2

SAUSAGE ACT, 1901, IN VOLATION OF—

Sausage, Bologna, containing cereals,	4
containing cereals and added water,	2
Potato Bologna, containing comminuted potato and added water,	1
Vienna Style, containing vegetable flour,	2
containing vegetable flour and added water,	1
	10

VINEGAR ACT, 1901, IN VIOLATION OF—

Vinegar, adulterated with glucose,	1
cider, adulterated,	2
contained added water,	3
consisting of acetic acid and water,	2
consisting of distilled vinegar, colored,	1

CASES TERMINATED—Continued

VINEGAR ACT, 1901, IN VIOLATION OF—Continued.	
Distilled, below the legal standard for acidity,	2
below the legal standard for acidity and colored with caramel,	2
Distilled, compound, colored with caramel,	1
consisting entirely of white wine vinegar,	1
Fermented Syrup, consisting of distilled vinegar colored with caramel,	3
	18
Total number of cases terminated,	1,093

III. QUANTITIES OF FOODS IN PENNSYLVANIA COLD STORAGE WAREHOUSES

Foods.	Units of Quantity.	1916, March 31.	1916, June 30.	1916, Sept. 30,	1916, Dec. 31.
Meats:					
Whole carcasses:					
Beef,	Lbs.	314,303	73,611	64,953	612,607
Veal,	Lbs.	45,544	4,025	34,448	42,046
Lamb and Mutton,	Lbs.	76,560	37,978	167,823	364,646
Hogs,	Lbs.	198,563	188,143	119,845	122,570
Parts of carcasses, classified:					
Beef,	Lbs.	697,443	743,315	1,111,277	1,748,988
Veal,	Lbs.	12,390	28,751	60,822	82,164
Lamb and Mutton,	Lbs.	75,177	78,972	39,486	101,258
Pork,	Lbs.	909,294	1,277,827	874,676	866,642
Parts of carcasses, not classified:	Lbs.	3,390	19,782	.....	10,864
Game,	Lbs.	3,204	3,096	2,757	46,384
Fish,	Lbs.	1,027,185	2,798,612	3,246,863	3,126,785
Domestic poultry,	Lbs.	2,365,351	1,495,279	1,931,423	4,135,311
Eggs:					
In shell,	Doz.	348,282	15,475,440	12,220,857	2,175,992
Broken,	Lbs.	167,490	269,545	586,716	382,849
Butter,	Lbs.	445,465	5,166,329	9,555,966	5,069,830

IV. RECEIPTS OF THE DAIRY AND FOOD BUREAU FOR THE YEAR 1916

Cold Storage Licenses,	$3,550 00
Cold Storage Fines,	840 50
Egg Fines,	1,528 50
Food Fines,	8,185 01
Ice Cream Fines,	200 00
Lard Fines,	560 50
Milk Fines, 1901,	150 00
Milk Fines, 1911,	6,317 91
Non-Alcoholic Drink Fines,	4,509 38
Oleomargarine Licenses,	274,614 64
Oleomargarine Fines,	1,227 25
Renovated Butter Licenses,	933 34
Renovated Butter Fines,	100 00
Sausage Fines,	500 00
Vinegar Fines,	150 00
	$303,367 03

V. AMOUNTS EXPENDED FROM THE APPROPRIATION FOR THE MAINTENANCE OF THE WORK OF THE DAIRY AND FOOD BUREAU OF THE PENNSYLVANIA DEPARTMENT OF AGRICULTURE FOR THE YEAR 1916

Dairy and Food Commissioner's Salary,	$3,999 84
Salary of Clerk, Dairy and Food Bureau,	1,500 00
Messenger's Salary, Dairy and Food Bureau,	900 00
Chemists' Services and Expenses,	14,483 21
Clerical and Stenographers,	7,800 00
Special Agents' Salaries,	20,587 50
Attorneys, Assistants and special,	6,542 14
Traveling and Agents' Expenses,	12,604 54
Enforcing Cold Storage Law,	9,514 74
Total expenditures for the year,	$77,931 97

COMMONWEALTH
vs.
A. B. CROWL.

In the Court of Quarter Sessions of the Peace for the County of Erie, Pennsylvania.
No. 32 September Sessions, 1911.
Rule for a new trial and in arrest of judgment.

Defendant was indicted and convicted for selling ice cream deficient in butter fat, under the Act of March 24, 1909, P. L. 63; Sections 4 and 6 of said Act being as follows:

Section 4. "No ice cream shall be sold within the State containing less than eight (8) per centum butter fat, except where fruit or nuts are used for the purpose of flavoring, when it shall not contain less than six (6) per centum of butter fat."

Section 6. "Any person, firm, or corporate body who shall violate any of the provisions of this Act shall be guilty of a misdemeanor, and, upon conviction thereof, shall be sentenced to pay a fine of not less than twenty-five (25) dollars, nor more than fifty (50) dollars."

It is earnestly urged for defendant that said Act was repealed by the later Act of May 13, 1909, P. L. 520. "Relating to food, etc."

But there is nothing in the later Act fixing a standard of butter fat for ice cream or that in any manner conflicts with or supercedes the above quoted 4th section of the earlier Act. It is not necessary here to decide whether or not some of the other provisions of the earlier act are abrogated by the later. We are clearly satisfied that so far as relate to the provisions involved in this case there was no repeal.

Implied repeal is not favored; and in our opinion those two statutes are in *pari materia,* and as far as practicable should be construed together.

The said ice cream act is in line with other recent pure food legislation, is intended to protect the public from deception and from imposition, and is in our opinion valid and a proper exercise of the police power of the Commonwealth. It is less drastic than the Oleomargarine Act of May 21, 1885, P. L. 22, and that was sustained both by our Supreme Court and by the Supreme Court of the United States.

Powell vs. Commonwealth, 114 Pa. 265.

Powell vs. Pennsylvania, 127 U. S. 678.

And it is not as drastic as the Act of June 8, 1911, P. L. 712, "Relating to Milk." Within reasonable bounds it is for the Legislature and not for the courts to say what per cent. of butter fat ice cream must contain. It is a well known article of food, and the manifest meaning of the statute is that when sold it must contain the per cent. of butter fat stated in the Act. In regulating the sale of food the Legis-

lature is not limited to the question of public health. Commonwealth vs. Kevin, 202 Pa. 23. Such legislation is beneficial to the public and should not be construed so strictly as to defeat the plain legislative intent. In the above cited case of Commonwealth vs. Kevin, 202 Pa., on page 27, the Supreme Court says:

"The object of the statute is to protect the public health by securing pure food and to prevent fraud and deception in the manufacture and sale of adulterated articles of food. The purpose of the Legislature in the passage of the Act is most commendable and the statute should receive a construction by the courts that will fully and effectively accomplish the object of its enactment." See also Stull vs. Reber, 215 Pa. 156; Commonwealth vs. Shoben, 215 Pa. 595; Bechtel's Election Expenses, 29 Superior Court on page 302.

The fact that the Dairy and Food Commissioner is charged with the enforcement of the Act does not prevent any other citizen from instituting prosecutions thereunder, and in our opinion is not material.

And now, June 24, 1912, the rule for a new trial and also the rule in arrest of judgment in above stated case are discharged.

Per Curiam,
(Signed) W.

To which same day the defendant excepts and an exception is sealed.

(Signed) EMORY A. WALLING, (L. S.),
P. J.

IN THE SUPERIOR COURT OF PENNSYLVANIA

COMMONWEALTH vs. A. B. CROWL. } No. 71 April Term, 1912. Appeal Q. S. Erie County. Filed Feb. 27, 1913.

HENDERSON, J.:

The first proposition presented by the appellant is that the title of the Act of March 24, 1909, does not comply with the requirements of section three of article three of the Constitution of Pennsylvania, in that it does not give sufficient notice of the provisions of section four of the statute under which the indictment was drawn. The title to the Act is: "An act for the protection of the public health and to prevent fraud and deception in the manufacture, sale, offering for sale, exposing for sale and having in possession with intent to sell, of adulterated or deleterious ice cream; fixing a standard of butter fat for ice cream; providing penalties for the violation thereof and pro-

viding for the enforcement thereof." The fourth section provides that: "No ice cream shall be sold within the State containing less than eight per centum of butter fat, except where fruits or nuts are used for the purpose of flavoring, when it shall not contain less than six per centum of butter fat." We need not refer to the numerous cases which hold that it is not necessary that the title to an Act be an index of the subjects legislated about. It is sufficient if it comprehend the subject involved and fairly puts the inquirer on notice. This Act has a single subject and the title covers it with a comprehensiveness more complete than is usual in legislation. It declares the purpose of the Act and gives notice that penalties are provided for a violation of its terms. One of the things particularly brought to the notice of the reader is that it fixes a standard of butter fat for ice cream, and it was for the violation of the law with reference to this provision that the defendant was convicted. We have no doubt that all of the provisions of the statute are cognate with the title. It is next contended that the enactment is not within the police power of the State in so far as it fixes a standard of butter fat for ice cream. We do not understand that there is any contention that that portion of the fourth section which forbids the manufacture or sale of adulterated or deleterious ice cream is not a proper subject of legislation. We are only concerned, therefore, with the inquiry whether a statute which fixes a standard of quality for ice cream is within the police power. The purpose of the Act was to suppress false pretences and to secure honest dealing in the sale of an article of food. That ice cream is in general use is admitted; that it is largely composed of milk and cream is shown by the evidence in the case. Its name implies the use of cream in its composition and all of the authorities to which the learned counsel for the appellant refers show that milk and cream are constituents in its composition. It enters so largely into the food supply of the public as to have become a proper subject of legislation, especially in view of the opportunities which its manufacture affords to practice imposition. In the popular understanding it is largely composed of milk of which butter fat is an important constituent. If, by the exercise of ingenuity and by the practice of unwarranted thrift a product can be put on the market having the name and appearance of ice cream but lacking the chief element which gives it value as an article of food, a large opportunity would be afforded to dealers in that article to profit by deception and it is the opportunity for such deceit of which the police power takes notice and seeks to take away. It is not necessary that injury has been done or a wrong perpetrated. The possibility that such results may take place warrants legislative intervention under the police power. We are not concerned with the wisdom of legislation under this power. Our only

inquiry is whether the power exists. Sovereignty is in the people and is expressed through their legislative representatives by the enactment of their wills into laws. Their authority is general except as restrained by the Constitution of the Commonwealth or the Constitution of the United States, and among legislative capacities one of the largest is the exercise of the police power. It is more easily described than defined, but that it extends to the protection of the lives, health and property of the citizens and to the preservation of good order and the public morals cannot be questioned and these objects are to be provided for by such legislation as the discretion of the law-making body may deem appropriate. It is not a successful denial of the exercise of these powers to say that the prohibited article is wholesome and not injurious to the consumer. The wholesomeness of the prohibited thing will not render the Act unconstitutional. The temptation to fraud and adulteration may be a consideration leading to regulative or prohibitive legislation. If it were not so courts would become the triers of the expediency of such legislation and the authority which the people committed to the legislature would be transferred by judicial action to the courts. Where a statute is clearly and palpably violative of the Constitution it is the duty of the courts to declare it invalid in the respects in which it is repugnant to this supreme law, but the presumptions are all in favor of th validity of legislative enactments and the burden is on him who asserts the contrary to make it clear beyond doubt that the constitutional power has been exceeded. It has been the policy of this State to legislate on the subject of milk and milk products and statutes have been enacted which made it unlawful for any person to sell milk which contained less than a fixed percentage of butter fat and less than a certain percentage of milk solids; making it unlawful to sell cream which contained less than a fixed percentage of butter fat; which classified cheese and fixed the percentage of butter fat which the various classes of cheese should contain; and similar legislation has been enacted in other states: State v. Campbell, 64 N. H. 404; Com. v. Waite, 11 Allen 264; State v. Smyth, 14 R. I. 100. Legislation of a like character is found in the Act of May 21, 1901, forbidding the sale of vinegar which contains less than four per cent. of absolute acetic acid. If the sale of pure milk containing less than three and one-fourth per cent. of butter fat may be prohibited it is not apparent why the same principle does not apply to ice cream. Milk is a natural product—wholesome and useful for food. The milk of many cows contains less than three and one-fourth per cent. of butter fat. The owners of such cattle have a constitutional right to sell the product of their dairies but this right has been held to be subordinate to the public welfare and this welfare demands that a fixed minimum stand-

ard of butter-fat shall exist in the whole milk sold in this Commonwealth. The known disposition of some dealers to cheat and the opportunity afforded them by the absence of some regulation of the business is the justification of such legislation under the police power. Through such laws the consumers have the assurance that that which they buy is what it is called and what it appears to be and the opportunity for imposition in selling an adulterated or inferior article of food for that which is wholesome and of a supposed standard of quality is removed. The integrity of the Act is not affected by the provisions that where fruits and nuts are used for flavoring six per cent. of butter fat shall be required in ice cream. It is obvious that the addition of fruits and nuts to a given quantity of ice cream would diminish the percentage of butter fat and it was apparently a consideration of this fact which caused the distinction between ice cream flavored with extracts and that to which nuts or fruits were added. No discrimination is made between individuals or preference given to particular manufacturers by this legislation and no substantial reason is advanced which would make such regulation destructive of the whole statute.

It is not an objection to the prosecution that it was not commenced by the Dairy and Food Commissioner. The functionary was specially charged with the enforcement of the provisions of the statute but that did not disable any citizen of the Commonwealth from appearing as a prosecutor. The offense is a misdemeanor and a prosecution for a violation of the Act might be instituted by any person inclined so to do.

The appellant further contends that the Act under consideration was repealed by the Act of May 13, 1909, relating to food; defining food and providing for the protection of the public health and the prevention of fraud and deception, etc. A comparison of the two Acts shows that the latter contains no provision with reference to the quantity of butter fat necessary in ice cream, nor any provision which is inconsistent with the fourth section of the Act of March 24, 1909, and as there is no express repeal, none arises by necessary implication. An earlier statute is repealed only in those particulars wherein it is clearly inconsistent and irreconcilable with later enactments. The antagonism must be so great as to convince the mind that the last enactment repealed the former. The objects of the two statutes are not the same and if so both can stand, though they may refer to the same subject. Moreover, both of these Acts were passed at the same session of the Legislature and the latter only a few weeks after the former. Under such circumstances there is a presumption against an implied repeal.

We do not regard the examination suggested in the 12th and 13th assignments as permissible. The evidence of the experts as to the

possibility that samples of ice cream taken from different parts of a can might or would exhibit a variation of butter fat content would not aid the jury in determining what were the constituents of the sample which the prosecuting witness bought and which the chemist for the Commonwealth analyzed. Mr. Pelton, a witness for the Commonwealth, testified that he bought a pint of chocolate ice cream from the defendant; that he asked for chocolate ice cream and that the defendant delivered to him a pint of ice cream which had the appearance of chocolate ice cream. It was this pint of ice cream which was analyzed and for the sale of which the defendant was prosecuted. It was shown to have had less than three per cent. of butter fat. Theories about what might have been found in some other part of the can from which the witness got his pint would not throw any light on the case. We are unable to obtain a point of view of the case from which we can observe any error in its trial. The case was fairly presented by the learned trial judge and the law expounded in accordance with the principles which govern the case on the undisputed facts.

The assignments are overruled, the judgment is affirmed and the record remitted to the court below to the end that the sentence may be carried into execution.

COMMONWEALTH OF PENNSYLVANIA,
COUNTY OF ALLEGHENY, } Sct.

I, GEORGE PEARSON, Prothonotary of the Superior Court of Pennsylvania, sitting at Pittsburgh, the said Court being a Court of Record, do hereby certify that the foregoing is a true and correct copy of the whole and entire opinion in the case of Commonwealth vs. Crowl, at No. 71, April Term, 1912, as full, entire and complete as the same remains on file in the said Superior Court, in the case there stated; and I do hereby further certify that the foregoing has been compared by me with the original record in said cause in my keeping and custody as the Prothonotary of said Court, and that the foregoing is a correct transcript from said record, and of the whole of the original thereof.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said Court, at Pittsburgh, in the County of Allegheny, sitting at Pittsburgh, as aforesaid, this sixth day of March, in the year of our Lord one thousand nine hundred and thirteen.

GEORGE PEARSON,
Prothonotary.

(Seal.)

SUPREME COURT OF THE UNITED STATES

Nos. 40 and 50, October Term, 1916.

The Hutchinson Ice Cream Co., et al., Plaintiffs in Error, vs. The State of Iowa.	In Error to the Supreme Court of the State of Iowa.
A. B. Crowl, Plaintiff in Error, vs. Commonwealth of Pennsylvania.	In Error to the Supreme Court of the State of Pennsylvania.

(December 4, 1916.)

Mr. Justice Brandeis delivered the opinion of the Court.

These cases were argued together. In each a state statute which prohibits the sale of ice cream containing less than a fixed percentage of butter fat is assailed as invalid under the fourteenth amendment; the Supreme Court of each state having held its statute constitutional. *State v. Hutchinson Ice Cream Co.,* 168 Iowa 1; *Commonwealth v. Crowl,* 245 Pa. Stat. 554. Iowa makes 12 per cent. the required minimum; Pennsylvania 8 per cent. The material provisions of the several statutes are copied in the margin.*

The right of the State under the police power to regulate the sale of products with a view to preventing frauds or protecting the public health is conceded by plaintiffs in error. And they do not contend that the particular percentages of butter fat set by Iowa and Pennsylvania are so exacting as to be in themselves unreasonable. Thirteen other states have by similar legislation set 14 per cent. as the minimum; five other states 12 per cent.; only eight states have fixed a percentage as low as Pennsylvania; and the United States Department of Agriculture has declared 14 per cent. to be standard. The main objection urged is this: To require that ice cream, in order to be legally salable, must contain some butter fat is a regulation so unreasonable and arbitrary as to be a deprivation of property without due process of law and a denial of the equal protection of the laws. To support this contention the following trade facts are shown:

The ice cream of commerce is not iced or frozen cream. It is a frozen confection—a compound. The ingredients of this compound may vary widely in character, in the number used and in the pro-

portions in which they are used. These variations are dependent upon the ingenuity, skill and judgment of the maker, the relative cost at a particular time or at a particular place of the possible ingredients, and the requirements of the market in respect to taste or selling price. Thus, some Philadelphia Ice Cream is made of only cream, sugar and a vanilla flavor. In making other Philadelphia Ice Cream the whites of eggs are added; and according to some formulas vanilla ice cream may be made without any cream or milk whatsoever; for instance by proper manipulation of the yolks of eggs, the whites of eggs, sugar, syrup and the vanilla bean. All of these different compounds are commonly sold as ice cream; and none of them is necessarily unwholesome.

Plaintiffs in error contend that as ice cream is shown to be a generic term embracing a large number and variety of products and the term as used does not necessarily imply the use of dairy cream in its composition, it is arbitrary and unreasonable to limit the ice cream of commerce to that containing a fixed minimum of butter fat. But the legislature may well have found in these facts persuasive evidence that the public welfare required the prohibition enacted. The facts show that in the absence of legislative regulation the ordinary purchaser at retail does not and cannot know exactly what he is getting when he purchases ice cream. He presumably believes that cream or at least rich milk is among the important ingredients; and he may make his purchase with a knowledge that butter fat is the principal food value in cream or milk. Laws designed to prevent persons from being misled in respect to the weight, measurement, quality or ingredients of an article of general consumption are a common exercise of the police power. The legislature defines the standard article or fixes some of its characteristics; and it may conclude that fraud or mistake can be effectively prevented only by prohibiting the sale of the article under the usual trade name, if it fails to meet the requirements of the standard set. Laws prohibiting the sale of milk or cream containing less than fixed percentages of butter fat present a familiar instance of such legislation. Cases in the state courts upholding laws of this character are referred to in the margin.* This court has repeatedly sustained the validity of similar prohibitions. *Schmidinger vs. Chicago,* 226 U. S. 578, *Armour & Co. v. North Dakota,* 240 U. S. 510.

It is especially urged that the statutes are unconstitutional because they do not merely define the term ice cream; but arbitrarily prohibit the sale of a large variety of wholesome compounds theretofore included under the name ice cream. The acts appear to us merely to prohibit the sale of such compounds as ice cream. Such is the construction given to the act by the Supreme Court of Iowa.

State v. Hutchinson Ice Cream Co., 168 Iowa 1, 15, which is of course binding on us. We cannot assume, in the absence of a definite and authoritative ruling, that the Supreme Court of Pennsylvania would construe the law of that State otherwise. The conviction here under review was for selling the "compound" as ice cream, so that we are not called upon to determine whether the State may in the exercise of its police power prohibit the sale even of a wholesome product, if the public welfare appear to require such action and if, as here, interstate commerce is not involved. See *Powell v. Pennsylvania,* 127 U. S. 678, 685; *Schollenberger v. Pennsylvania,* 171 U. S. 1, 15.

In view of the conclusions stated above it is unnecessary to consider whether the statutes are or are not sustainable as health measures; and upon this we express no opinion.

The judgment in each case is affirmed.

(238 U. S. 446.)

W. T. PRICE, Plaintiff in Error,
vs.
PEOPLE OF THE STATE OF ILLINOIS.

Courts (§366*)—Error to State Court—Scope of Review—Statutory Construction.

1. The correctness of a state court's construction of a state statute is simply a question of local law which the Federal Supreme Court cannot review when determining on writ of error to the state court the validity of such statute under the Federal Constitution.

(Ed. Note.—For other cases, see Courts, Cent. Dig. §§954-957, 960-968; Dec. Dig. §366.*)

Constitutional Law (§278*)—Food (§1*)—Due Process of Law—Police Power—Forbidding Sale of Food Preservatives Containing Boric Acid.

2. The prohibition against the sale of food preservatives containing boric acid which is made in the avowed exercise of the police power to protect the public health by Hurd's (III) Rev. Stat. chap. 127b, §§8, 22, as construed by the state courts, is not so arbitrary or unreasonable as to amount to a deprivation of property without due process of law.

(Ed. Note.—For other cases, see Constitutional Law, Cent. Dig. §§763, 765, 767-770, 772-777, 779-806, 808-810, 816-824, 907-924, 942; Dec. Dig. §278;* Food, Cent. Dig. §§1, 2; Dec. Dig. §1.*)

Constitutional Law (§239*)—Equal Protection of the Laws—Classification—Sale of Food Preservatives Containing Boric Acid.

3. The sale of food preservatives containing boric acid may be forbidden, as is done by Hurd's (III) Rev. Stat. chap. 127b, §§8, 22, as construed by the state courts, without denying the equal protection of the laws.

(Ed. Note.—For other cases, see Constitutional Law, Cent. Dig. §§694, 696; Dec. Dig. §239.*)

Commerce (§41*)—"Original Package"—Envelopes Suitable for Retail Trade.

4. Small packages (envelopes) of a food preservative suitable for the consumer, which are associated in their interstate shipment, and are subsequently sold separately in various lots, cannot be classed as original packages, although respectively in the original envelopes, so as to escape the prohibition of Hurd's (III) Rev. Stat. chap. 127b, §§8, 22, against the sale of food preservatives containing boric acid.

(Ed. Note.—For other cases, see Commerce, Cent. Dig. §§30, 31; Dec. Dig. §41.* For other definitions, see Words and Phrases, First and Second Series, Original Package.)

(No. 274.)

Argued May 12, 1915. Decided June 21, 1915.

In error to the Supreme Court of the State of Illinois to review a judgment which affirmed a conviction in the Municipal Court of Chicago, in that state, of a violation of the state pure food law. Affirmed.

See same case below, 257 III 587, 101 N. E. 196, Ann. Cas. 1914A, 1154.

The facts are stated in the opinion.

Mr. Trafford N. Jayne for plaintiff in error.

Mr. Lester H. Strawn and Mr. Patrick J. Lucey, Attorney General of Illinois, for defendant in error.

Mr. JUSTICE HUGHES delivered the opinion of the court.

This is a writ of error to review a judgment of the supreme court of Illinois, which affirmed a judgment of the municipal court of Chicago, finding the plaintiff in error guilty of a violation of the "pure food" statute of that state, and imposing a fine. 257 III. 587, 101 N. E. 196, Ann. Cas. 1914A, 1154.

The violation consisted of a sale in Chicago of a preservative compound known as "Mrs. Price's Canning Compound," alleged to be intended as a "preservative of food," and to be "unwholesome and injurious in that it contained boric acid."

The statute (Laws of Illinois 1907, p. 543; Hurd's Rev. Stat. chap. 127b, §§8 and 22) provides:

"§8. Defines Adulteration. That for the purpose of this act an article shall be deemed to be adulterated: . . .

"In case of food: . . .

"Fifth—If it contain any added poisonous or other added deleterious ingredients which may render such article injurious to health: Provided, That when in the preparation of food products for shipment they are preserved by an external application, applied in such a manner that the preservative is necessarily removed mechanically, or by maceration in water, or otherwise, and directions for the removal of said preservatives shall be printed on the covering of the package, the provisions of this act shall be construed as applying only when such products are ready for consumption; and formaldehyde, hydrofluoric acid, boric acid, salicylic acid and all compounds and derivatives thereof are hereby declared unwholesome and injurious. . . .

"§22. Sale of Preservatives Prohibited. No person, firm or corporation shall manufacture for sale, advertise, offer or expose for sale, or sell, any mixture or compound intended for use as a preservative or other adulterant of milk, cream, butter or cheese, nor shall he manufacture for sale, advertise, offer or expose for sale, or sell any unwholesome or injurious preservative or any mixture or compound thereof intended as a preservative of any food: Provided, however, That this section shall not apply to pure salt added to butter and cheese."

A trial by jury was waived. There was a stipulation of facts setting forth, in substance, that the defendant had sold in Chicago two packages of the preservative in question; that the compound contained "boric acid"; that the label on the packages bore the following statement: "It is not claimed for this compound that it contains anything of food value, but it is an antiseptic preparation, and among its many uses may be employed to prevent canned fruits and vegetables from souring and spoiling"; that the preservative was not offered for sale or sold in any food product, but only separately as a preservative; and that the defendant was accorded a hearing before the State Food Commission pursuant to the provisions of the food law.

There was also introduced in evidence on behalf of the state an envelope, used for inclosing the compound, upon which were statements as to its uses, prices, etc. It was thus stated that the preservative could be used "in canning all kinds of fruit," and was "especially valuable for corn, beans, peas," etc. There was also the statement on the envelope that the contents "of this package" were

sufficient for "four quarts," and that the retail prices were from 10 cents for one "package" to $1 for fifteen "packages." That was the case for the state.

A motion to dismiss was denied. The plaintiff then made an offer of proof, and thereupon it was stipulated that a witness in court, if sworn, would testify that the "Price Canning Compound is an article of commerce, which has been sold under that distinct name for a period of years, with the ingredients and in the proportions contained in the sample taken by the Food Department, which is the subject of this suit; that it has acquired a wide reputation over a large number of states in the Union as a distinctive article, used for canning by the housewife;" that "it is not sold to manufacturers of food or canners of food for sale"; and that "boric acid is a constituent part of the compound and has been such during all the time that the compound has been sold."

Objection to evidence offered that "there is no added ingredient of any kind whatever, whether it be injurious, deleterious, or otherwise," was sustained as not being addressed to the charge made. The defendant (the plaintiff in error) also offered to prove "that boric acid is not injurious to health or to the human system," and that the "Price Canning Compound is not adulterated or mislabeled in any way." The offer was rejected, and the defendant excepted. In response to a further offer, it was conceded that the witness, if placed upon the stand, would testify that the compound "is an article of commerce, sold in Illinois in the original package manufactured in Minnesota."

Upon this state of the record, the contention of the plaintiff in error that the statute was inapplicable, or, if applicable, was repugnant to the Constitution of the state, and to the commerce clause and the 14th amendment of the Federal Constitution, was overruled.

The Supreme Court of the state thus construed the statute:

"We will first notice the objection of plaintiff in error that §8 deals only with foods; that the declaration in that section that boric acid is injurious and unwholesome is limited to foods containing that substance as an added ingredient, and has no application to a preservative which is not, and does not purport to be, a food.

"Both §§8 and 22 are part of one act, and the act as a whole should be so construed as to give effect to its manifest purpose and intent. Its main purpose is to protect health by preventing adulteration of food by any unwholesome and injurious ingredient. Boric acid is declared to be unwholesome and injurious, and the sale of any food to which it is an added ingredient is prohibited. It was well known to the legislature that various compounds are manufactured and sold for preserving foods of different kinds. If such preservatives contain unwholesome and injurious ingredients, their use by the

housewife, or anyone else, in preserving fruits or food, would be as injurious to the health as if they had been added by a dealer or manufacturer to fruits or other foods before placing them on the market. The object of the act is to protect the public health by preventing dealers from selling food to which had been added, for the purpose of preserving it, ingredients injurious to the health, or from selling any compound as a preservative which contained any such ingredients. The prohibition is not against the sale of all preservatives, but is against only unwholesome or injurious preservatives. . . . It is just as important to prohibit the sale to the housewife of a compound containing boric acid, to be used by her to preserve fruits and vegetables put up by her for family use, as it is to prohibit the sale of fruits and vegetables after such an ingredient has been added. We think the reasonable construction of the act to be that the prohibition against boric acid is not limited to foods to which it is an added ingredient, but extends to compounds sold as a food preservative which contain boric acid. The danger to health is as great from one as the other, and the prohibition of both was necessary to effect the evident purpose of the legislature." 257 Ill. pp. 592, 593.

The plaintiff in error challenges the correctness of this construction, but this question is simply one of local law with which we are not concerned. We accept the decision of the Supreme Court of the state as to the meaning of the statute, and, in the light of this construction, the validity of the act under the Federal Constitution must be determined. Missouri P. R. Co. v. Nebraska, 164 U. S. 403, 414, 41 L. ed. 480, 494, 17 Sup. Ct. Rep. 130; W. W. Cargill Co. v. Minnesota, 180 U. S. 452, 466, 45 L. ed. 619, 925, 21 Sup. Ct. Rep. 423; Lindsley v. National Carbonic Gas Co. 220 U. S. 61, 73, 55 L. ed. 369, 375, 31 Sup. Ct. Rep. 337, Ann. Cas. 1912C, 160; Purity Extract Tonic Co. v. Lynch, 226 U. S. 192, 198, 57 L. ed. 184, 186, 33 Sup. Ct. Rep. 44.

The first Federal question is presented by the contention that the statute, as applied, effects a deprivation of property without due process of law and a denial of the equal protection of the laws, contrary to the 14th amendment.

The state has undoubted power to protect the health of its people and to impose restrictions having reasonable relation to that end. The nature and extent of restrictions of this character are matters for the legislative judgment in defining the policy of the state and the safeguards required. In the avowed exercise of this power, the legislature of Illinois has enacted a prohibition—as the statute is construed—against the sale of food preservatives containing boric acid. And unless this prohibition is palpably unreasonble and arbi-

trary we are not at liberty to say that it passes beyond the limits of the state's protective authority. Powell v. Pennsylvania, 127 U. S. 678, 686, 32 L. ed. 253, 257, 8 Sup. Ct. Rep. 992; 1257; Crowley v. Christensen, 137 U. S. 86, 91, 34 L. ed. 620, 623, 11 Sup. Ct. Rep. 13; Holden v. Hardy, 169 U. S. 366, 395, 42 L. ed. 780, 792, 18 Sup. Ct. Rep. 383; Capital City Dairy Co. v. Ohio, 183 U. S. 238, 246, 46 L. ed. 171, 175, 22 Sup. Ct. Rep. 120; Jacobson v. Massachusetts, 197 U. S. 11, 25, 49 L. ed. 643, 649, 25 Sup. Ct. Rep. 358; 3 Ann. Cas. 765; New York ex rel. Silz v. Hesterberg, 211 U. S. 31, 39, 53 L. ed. 75, 79, 29 Sup. Ct. Rep. 10; McLean v. Arkansas, 211 U. S. 539, 547, 53 L. ed. 315, 319, 29 Sup. Ct. Rep. 206; Chicago, B. & Q. R. Co. v. McGuire, 219 U. S. 549, 569, 55 L. ed. 328, 339, 31 Sup. Ct. Rep. 259; Purity Extract and Tonic Co. v. Lynch, 226 U. S. 192, 198, 57 L. ed. 184, 186, 33 Sup. Ct. Rep. 44; Hammond Packing Co. v. Montana, 233 U. S. 331, 333, 58 L. ed. 985, 987, 34 Sup. Ct. Rep. 596. The contention of the plaintiff in error could be granted only if it appeared that by a consensus of opinion the preservative was unquestionably harmless with respect to its contemplated uses; that is, that it indubitably must be classed as a wholesome article of commerce so innocuous in its designed use and so unrelated in any way to any possible danger to the public health that the enactment must be considered as a merely arbitrary interference with the property and liberty of the citizen. It is plainly not enough that the subject should be regarded as debatable. If it be debatable, the legislature is entitled to its own judgment, and that judgment is not to be superseded by the verdict of a jury upon the issue which the legislature has decided. It is not a case where the legislature has confined its action to the prohibition of that which is described in general terms as unwholesome or injurious, leaving the issue to be determined in each case as it arises. The legislature is not bound to content itself with general directions when it considers that more detailed measures are necessary to attain a legitimate object. Atlantic Coast Line R. Co. v. Georgia, 234 U. S. 280, 288, 58 L. ed. 1312, 1316, 34 Sup. Ct. Rep. 829. Legislative particularization in the exercise of protective power has many familiar illustrations. The present case is one of such particularization, where the statute—read as the state court reads it—especially prohibits preservatives containing boric acid. The legislature thus expressed its judgment, and it is sufficient to say, without passing upon the opinions of others adduced in argument, that the action of the legislature cannot be considered to be arbitrary. Its judgment appears to have sufficient support to be taken out of that category. See Hipolite Egg Co. v. United States, 220 U. S. 45, 51, 55 L. ed. 364, 365, 31 Sup. Ct. Rep. 364; Circular No. 15 (June 23, 1904), Bureau of Chemistry; Food Inspection Decision 76 (July 13, 1907); Bulletin

(December 31, 1914), Bureau of Chemistry; U. S. Department of Agriculture.

It is further urged that the enactment, as construed, contains an unconstitutional discrimination against the plaintiff in error, but in this aspect, again, the question is whether the classification made by the Legislature can be said to be without any reasonable basis. The legislature is entitled to estimate degrees of evil, and to adjust its legislation according to the exigency found to exist. And, applying familiar principle, it cannot be said that the legislature exceeded the bounds of reasonable discretion in classification when it enacted the prohibition in question relating to foods and compounds sold as food preservatives. Ozan Lumber Co. v. Union County Nat. Bank, 207 U. S. 251, 256, 52 L. ed. 195, 197, 28 Sup. Ct. Rep. 89; Heath & M. Mfg. Co. v. Worst, 207 U. S. 338, 354, 52 L. ed. 236, 243, 28 Sup. Ct. Rep. 114; Lindsley v. Natural Carbonic Gas Co., 220 U. S. 61, 78, 55 L. ed. 369, 377, 31 Sup. Ct. Rep. 337; Ann. Cas. 1912C, 160; Mutual Loan Co. v. Martell, 222 U. S. 225, 235, 56 L. ed. 175, 179, 32 Sup. Ct. Rep. 74, Ann. Cas. 1913B, 529; Eberle v. Michigan, 232 U. S. 700, 706, 58 L. ed. 803, 806, 34 Sup. Ct. Rep. 464; Keokee Consol. Coke Co. v. Taylor, 234 U. S. 224, 227, 58 L. ed. 1288, 1289, 34 Sup. Ct. Rep. 856; Miller v. Wilson, 236 U. S. 373, 383, 384, 59 L. ed. —, 35 Sup. Ct. Rep. 342. We find no ground for holding the statute to be repugnant to the 14th amendment.

The remaining contention is that the statute as applied violates the commerce clause. Treating the article as one on a footing with adulterated food, the power of the state to prohibit sales within its borders is broadly asserted on its behalf. On the other hand, the plaintiff in error insists that the compound is not an adulterated food, and was not charged to be such, but was an article of commerce manufactured in another state; and that whatever may be the power of the state of Illinois over manufacture and sale apart from interstate commerce, the state could not prohibit its introduction and sale in the course of interstate commerce. It is not necessary, however, to deal with the question in the scope thus suggested. The sole ground for invoking the commerce clause in order to escape the restrictions of the state law is sought to be found in the doctrine with respect to sales in original packages. Brown v. Maryland, 12 Wheat. 419, 6 L. ed. 678; Leisy v. Hardin, 135 U. S. 100, 34 L. ed. 128, 3 Inters. Com. Rep. 36, 10 Sup. Ct. Rep. 681; Schollenberger v. Pennsylvania, 171 U. S. 1, 22, 23, 43 L. ed. 49, 57, 18 Sup. Ct. Rep. 75. The record, however, is wholly insufficient to support the contention. The stipulation of facts read in evidence by the state set forth that the defendant had sold in Chicago "two packages" of the compound. The state then introduced in evidence an "envelope used for inclosing

the compound." This, among other things, bore a statement that the content of "this package is sufficient for four quarts." And it set forth prices as follows: "Retail Price. 1 Package, 10c. 3 Packages, 25c. 7 Packages, 50c. 15 Packages, $1." The clear inference from this evidence was that the compound was offered for sale at retail in small packages (in envelopes) suitable for the consumer. The defendant made an offer of proof, and in lieu of the offered testimony it was conceded that the witness, if sworn, would testify that the compound mentioned in the statement of claim "is an article of commerce sold in Illinois, in the original package manufactured and made in Minnesota." As to the nature of the package, nothing more was shown. All that was admitted was entirely consistent with the view that the original package referred to was simply the small package in the envelope which the state had described, and no error can be charged to the state court in so regarding it. Nothing appeared as to the character of the shipment from Minnesota to Illinois, and it would be wholly unjustifiable to assume that, in commercial shipments into the state, the small package was segregated or separately introduced. If these small packages were associated in their shipment into the state, as they naturally would be, and were subsequently sold separately or in various lots, these separate packages, although respectively in the original envelopes, would not be classed as "original packages" within the rule invoked, so as to escape the local law governing domestic transactions. We have repeatedly so held, in cases not materially different in this respect. Austin v. Tennessee, 179 U. S. 343, 45 L. ed. 224, 21 Sup. Ct. Rep. 132; Cook v. Marshall County, 196 U. S. 261, 49 L. ed. 471, 25 Sup. Ct. Rep. 233; Purity Extract and Tonic Co. v. Lynch, 226 U. S. 192, 199-201, 57 L. ed. 184, 186-188, 33 Sup. Ct. Rep. 44. The testimony offered by the plaintiff in error, and treated as received, taken in connection with what had already been proved as to the character of the packages put up for retail sale, fell far short of the proof required to constitute a defense upon the ground that the state law, otherwise valid, was applied in contravention of the commerce clause.

It should be added that no question is presented in the present case as to the power of Congress to make provision with respect to the immediate containers (as well as the larger receptacle in which the latter are shipped) of articles prepared in one state and transported to another, so as suitably to enforce its regulations as to interstate trade. McDermott v. Wisconsin, 228 U. S. 115, 135, 57 L. ed. 754, 767, 47 L. R. A. (N. S.) 984, 33 Sup. Ct. Rep. 431. It does not appear that the state law as here applied is in conflict with any Federal rule.

Judgment affirmed.